

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1. a. Whether there should be additional reimbursement of \$5,410.02 for date of service, 05/24/01.
- b. The request was received on 05/14/02.

### **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. Initial TWCC 60 and Letter Requesting Dispute Resolution
    1. UB-92s
    2. Medical Audit summary/EOB/TWCC 62 form
  - b. Subsequent Submission of Information
    1. Position statement
    1. Medical Records
    2. Medical Audit summary/EOB/TWCC 62 form
    3. UB-92s
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome
2. Respondent, Exhibit II:
  - a. Response to a Request for Dispute Resolution
  - b. Methodology for Texas Ambulatory Surgical Centers
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome..
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 07/01/02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 07/01/02. The response from the insurance carrier was received in the Division on 07/11/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 06/25/02

“The Carrier failed to provide an adequate response to the request for reconsideration. Based upon the initial denial presented by the Carrier, it is the requestor’s position that the Carrier is required to pay the entire amount in dispute.... ..the Carrier did not provide any documentation of a developed or consistently applied methodology, which was used in reducing payment for the treatment/service in question.”

2. Respondent: Letter dated 07/11/02

“It is the (Carrier’s) position that a) the requester failed to produce any credible evidence that its billing for the disputed procedures is fair and reasonable; b) the requester failed to prove its usual and customary fees for the service in dispute is fair and reasonable are consistent with Section 413.011 (b); c) the (Carrier’s) payment is consistent with fair and reasonable criteria established in Section 413.011 (b) of the Texas Labor Code; and d) Medicare fair and reasonable reimbursement for similar or same services is below the (Carrier’s). Consequently, it is the (Carrier’s) position that no further reimbursement is due the requester.”

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 05/24/01.
2. This decision is being written based on the documentation that was in the file at the time it was assigned to this Medical Dispute Resolution Officer.
3. Per the Requestor’s Table of Disputed Services, the Requestor billed the Carrier \$5,862.82 for services rendered on the above date in dispute.
4. Per the Requestor’s Table of Disputed Services, the Carrier paid the Requestor \$397.80 and continues to deny additional reimbursement as M – Reduced to fair and reasonable for services rendered on the above date in dispute.
5. The amount in dispute is \$5,410.02 for services rendered on the above date in dispute.

#### **V. RATIONALE**

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

The initial bill submitted that is in dispute is broken down into operating room services, iv therapy, supplies, recovery room charges, etc. The provider indicated on the bottom of the bill, please see attached report for detailed break out. Charges are for Ambulatory Surgery Ctr. Facility Fees. The resubmitted bill bundles all the cost together, and indicates, total charges/facility fee. The Requestor's TWCC-60 separates the individual charges. However, the total is considered the facility fees (what the facility charged for providing the facility, equipment and supplies in order for the surgical procedure to be done).

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement. Even though the provider has submitted EOBs from other carriers to document what it considers fair and reasonable reimbursement, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 20<sup>th</sup> day of August 2002.

Denise Terry, R.N.  
Medical Dispute Resolution Officer  
Medical Review Division

DT/dt

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.